

CENTRAL INTELLIGENCE AGENCY

WASHINGTON, D.C. 20505

15 AUG 1978

DD/A Registry
File Security 5-1

Mr. Rick Neustadt
Assistant Director
Domestic Policy Staff
U.S. Department of Commerce
Old Executive Office Building
Room 208
Washington, D.C. 20500

Dear Mr. Neustadt:

This letter contains our responses to the six questions posed by your memorandum of 21 July 1978, which transmitted a copy of the draft response memorandum based on the work of the task forces organized to study the report of the Privacy Protection Study Commission. In responding, we are omitting mention of Part II, which deals exclusively with application of privacy policy in "the non-Federal sector," where comments by a foreign intelligence organization would seem to be appropriate. Our comments concentrate on those aspects of the report which could have an impact on the way CIA carries out its responsibilities. In this regard and as a general observation, we find that the draft does not seem to pay adequate attention to the informational needs of foreign intelligence and counterintelligence programs, and would urge the addition of a statement which expresses the intention of the Executive Branch, in developing its privacy policy, to ensure that information required for such programs continues to be available.

Our responses to your questions follow:

(1) Does this paper inaccurately state your position on any issue?

No position is attributed specifically to CIA. A number of positions are presented as being the consensus of the participating agencies, and in the cases which concern us the consensus is acceptable.

(2) Do you have any serious objections to any of the items reported as "areas of agreement?"

In Section III the first "area of agreement" includes "notice to an individual of government access to his records." The summary statement on page 192 omits the

essential qualification, which appears on page 99, that there is also agreement that some exceptions should be made to this principal of notification. Agencies with investigative responsibilities must have some capacity, under certain conditions, to conduct investigations without the subject's knowledge of the fact.

(3) For each issue of concern to you in the "areas of disagreement" or "issues for decision" sections, which option do you recommend?

As noted above, we will not comment on Part II. In Part III our recommended decision options are as follows, keyed to your question numbers:

1. "Permit agencies...to use a formal written request procedure..."
2. "Adopt Justice/Treasury Proposal: Burden on individual to....establish factual basis for questioning propriety..; 'legitimate law enforcement purpose' standard."
3. "Adopt the Justice/Treasury notice and challenge proposal."
4. "Exempt judicial subpoena from access proposals in this course of litigation."
5. "Retain present law without change."
6. "Adopt Justice/Treasury approach and retain present law without change."
- 7.A. "No paper trail."
- 7.B. "No paper trail."
8. "Apply access provisions directly only to Federal agencies; but expressly permit...states to adopt new access processes..."
9. "Adopt Justice position..."

In Part IV.A., our recommendations are:

1. "Defer fundamental changes in [Privacy] Act..."
2. "Do not extend Act."

3. "Take no action..."

4. "Adopt Privacy Commission proposal to create an agency position to oversee implementation of this Privacy Act."

5. "Assign oversight and review responsibilities to the designated agency official."

In Part IV.B., we recommend adopting the first decision, "Do not limit government operation of EFT for the private sector," but would delete the qualifying "at this time."

In Part V.A., we would "take no position" on the use of truth verification devices in the private sector, but must add the reminder that CIA considers the use of the polygraph indispensable to its personnel security program, and has so testified to Congressional committees on many occasions. (In this regard, it might be useful to mention that CIA has a specific exemption from the Civil Service Commission prohibition against the use of the polygraph.)

In Part V.B., we would prefer "No, do not amend E.O. 9397"; and in Part V.C. we support "No, there should not be such a policy."

In Part VI on questions 1, 3 and 4 we vote "no."

2. We support "Establish these functions."

5. We would "Divide functions between existing agencies..." and in both categories of functions suggest Commerce (NTIA) as the logical focal point.

(4) Should any privacy issues be addressed which are not currently discussed?

In a sense the national security and investigation access concern cited above is a privacy issue, but we have elected to deal with it as a qualification which relates to a number of issues.

(5) Which issues appear amenable to resolution through further interagency coordination without need for Presidential decision?

(6) Which issues do you believe require Presidential decision?

Question No. 8 in Part III may require Presidential attention, given the ramifications of a proposal to impose Federal rules on state and local governments. The remaining issues (again excluding Part II) would seem to be "amenable to resolution through further inter-agency coordination."

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for
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